

## REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks.

Claims 35-37, 43, 45, and 47-49 were pending in this application. In this Amendment, Applicants have amended claims 35-37, 43, and 47-49, canceled claim 45, and added new claims 50-53. Accordingly, claims 35-37, 43, 47-49, and 50-53 will be pending herein upon entry of this Amendment. For the reasons stated below, Applicants respectfully submit that all claims pending in this application are in condition for allowance.

In the final Office Action mailed February 9, 2005, the Examiner rejected claims 35-37, 43, 45, and 47-49 under 35 U.S.C. § 112, first and second paragraphs, for lacking support in the specification and for indefiniteness. The Examiner rejected claims 35, 37, and 45 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,313,745 to Suzuki (“Suzuki”). The Examiner also rejected claims 36, 43, and 47-49 under 35 U.S.C. § 103(a) as being unpatentable over Suzuki in view of U.S. Patent No. 6,127,928 to Issacman et al. (“Issacman”).

The Examiner also invited the Applicants to submit new drawings that follow what is disclosed in the specification, and which the Examiner would not consider new matter. Applicants gratefully acknowledge this offer, and will consider adding new drawings upon an indication of allowable subject matter.

**35 U.S.C. § 112, ¶¶ 1-2**

With respect to the § 112 rejections of claims 35, 37, 45, 47, and 49, the Examiner considered the term “defective styles” to be unclear, new matter, and lacking written description. Contrary to this assertion, Applicants respectfully submit that one of ordinary skill in the art would readily understand the term “defective styles,” especially in light of the specification’s disclosure of the collection of fitting room data and the use of such data to show particular garment styles having a problem with fit or detailing. (*See, e.g.*, specification at paragraph [0083].) Skilled artisans would, and regularly do, refer to such garment styles as defective styles. Nonetheless, Applicants have amended claims 35, 37, 47, and 49 (and canceled claim 45) to remove the recitation of “defective styles” and have elected instead to recite the phrase “a garment having a problem with fit or detailing.” This language is identical to the language found in the specification at paragraph [0083] and is therefore undoubtedly supported by the written description.

With respect to the § 112, first paragraph, rejection of claims 35 and 37, the Examiner also considered the steps of identifying or determining and reporting defective styles to be new matter, lacking written description. In response, Applicants have amended claims 35 and 37 to closely match the written description, *e.g.*, paragraphs [0028] and [0083] of the specification. In particular, claims 35 and 37 now recite determining or identifying garment styles that are tried on or taken to the fitting room, but not purchased, and that these garment styles are the garment styles having a problem with fit or detailing. Paragraph [0028] explicitly states that the invention correlates fitting room data with sales data to provide business information and market research

tools by “identifying products that are frequently tried on, but seldom purchased.” Further developing this aspect of the invention, paragraph [0083] goes on to explain that fitting room data, correlated with the sales data, can “show that a particular style of garment is frequently tried on, but seldom purchased, which could suggest a problem with the fit or detailing...”

These passages therefore provide clear support for the recitations of amended claims 35 and 37.

With respect to the § 112, first paragraph, rejection of claim 36, the Examiner considered the limitation of determining and reporting display locations that attract greater consumer interest to be new matter and lacking written description. In response, Applicants respectfully submit that the fitting room data collection described in the specification at, for example, paragraphs [0028] and [0083] clearly supports these recitations. As disclosed in paragraph [0028], fitting room data “concerning the identity of products taken into the fitting rooms is gathered as indicia of consumer interest in the garment.” The invention correlates this data “with other data, such as sales data or *shelf location data*, to provide business information and market research tools by...showing the relationship between the frequency with which a garment is tried on and the garment’s *location within the store*” (emphasis added). In paragraph [0083], the specification further explains that “a retailer can gather information as to what products are taken to fitting rooms – an indication of consumer interest.” Using this information, the specification discloses that “the relationship between the frequency with which a garment is tried on and the *garment’s location* within the store could be helpful in merchandising products” (emphasis added). The present application therefore plainly supports the collection of fitting room data and the use of that data to determine merchandising locations that attract greater consumer interest based on the

frequency by which garments associated with the merchandising locations are taken to the fitting rooms.

To further emphasize the connection between these recitations of claim 36 and the written description, Applicants have amended claim 36 to recite the correlating of the fitting room data (*i.e.*, scanned RFID tagged garments that are taken to a fitting room) with the merchandising location and, based on this correlation, the showing of the relationship between the frequency with which a garment is tried on and the garment's merchandising location. This language closely parallels that of the specification at paragraphs [0028] and [0083]. Applicants have also added new claim 50 as dependent from amended claim 36 to recite a further aspect of the invention in which the relationship between the frequency with which a garment is tried on and the garment's merchandising location is used as a market research tool providing guidance for merchandising products, *i.e.*, determining merchandising locations that attract greater consumer interest. These additional aspects of consumer interest and merchandising are also clearly spelled out in paragraphs [0028] and [0083] of the specification.

### **35 U.S.C. §§ 102 and 103**

Regarding the § 102 rejection of claims 35, 37, and 45, Applicants respectfully submit that Suzuki in no way suggests the identifying of garment styles having a problem with fit or detailing. By contrast, Suzuki is focused on recommending other items consistent with those that a customer has tried on and with the customer's profile information (see, *e.g.*, column 1, lines 8-10 and column 2, lines 10-23); on maintaining a purchase and trial history of the customer,

which indicates items that the customer has taken to the fitting room and whether the customer has purchased the items or not (*see, e.g.*, column 2, lines 46-50.); and on determining popular items based on the frequency that such items are taken to the fitting room (*see, e.g.*, column 2, line 66 to column 3, line 2.) Although Suzuki may disclose collecting a trial history of tried on and not purchased data for a particular customer, Suzuki completely ignores the correlation, among many different customers, of RFID tagged garments that are tried on but not purchased with the styles of those garments, for the purpose of determining garment styles having a problem with fit or detailing. Suzuki is primarily concerned with providing efficient customer service to an individual customer by recommending garment styles, colors, brands, etc. consistent with the individual customer's trial history. Suzuki therefore analyzes the customer's preference for particular garment styles, and may determine styles that are not preferred by the individual customer, but notably does not analyze the garment styles themselves, among many different customers, to identify problems with fit or detailing that are suggested by garment styles that are frequently tried on but seldom purchased. In this way, Suzuki fails to teach or suggest the present invention's identification of problematic garment styles, as is claimed in amended claims 35 and 37.

In much the same way, with respect to the § 103 rejections of claims 36, 43, and 47-49, Suzuki in no way suggests the tracking of consumer interest in merchandising locations within a retail store, based on cumulative fitting room data from a plurality of customers correlated with merchandising locations. As the Examiner correctly noted in the Office Action, Suzuki does not disclose using RFID tags to determine the merchandising locations of garments on a sales floor.

As such, Suzuki fails to teach or suggest any aspect of merchandising location as it relates to consumer interest, as is recited in amended claim 36. Thus, there would be no suggestion or motivation to even look to Issacman to locate items. Moreover, even if one were to look to Issacman, because Issacman relates to locating items (primarily, files) within a facility, Issacman contains no teaching or suggestion to correlate the RFID tagged garments that are taken to a fitting room of the retail store with their merchandising locations and to show, based on this correlation, the relationship between the frequency with which a garment is tried on and the garment's merchandising location, for the purpose of tracking consumer interest in merchandising locations within the retail store.

With regard to claim 43, the Examiner took Official Notice that “the moving of garments to display locations that attract greater consumer interest is a well-known practice in merchandising regardless of the product in order to increase sales.” This rejection appears to be based on claim 43 as it previously appeared before the amendments entered in the Amendment dated October 18, 2004. Nonetheless, this rejection fails to account for the present invention’s correlation of fitting room data to merchandising location, for the purpose of determining merchandising locations attracting the greatest consumer interest, as is recited in amended claims 36 and 43. The Examiner’s combination of Suzuki and Issacman also fails to teach or suggest this feature. Should the Examiner maintain that this feature is obvious in view of Official Notice, Applicants respectfully request that, in support of the Official Notice, the Examiner provide documentary evidence showing this feature, as is required by M.P.E.P. § 2144.03.

Thus, Applicants respectfully submit that amended independent claims 35-37 are patentable over the prior art of record. Applicants have also amended claims 43, 47, and 49, and have added new claim 50, consistent with the amendments to claims 35-37. Applicants further respectfully submit that claims 43, 47, 49, and 50 are also allowable due at least to their dependency on an allowable base claim.

Applicants have also added new claims 51-53, which recite the patentable features discussed above related to the correlation of RFID tagged garments that are tried on but not purchased with the styles of those garments, for the purpose of determining garment styles having a problem with fit or detailing. Accordingly, Applicants respectfully submit that claims 51-53 are patentable over the prior art of record.

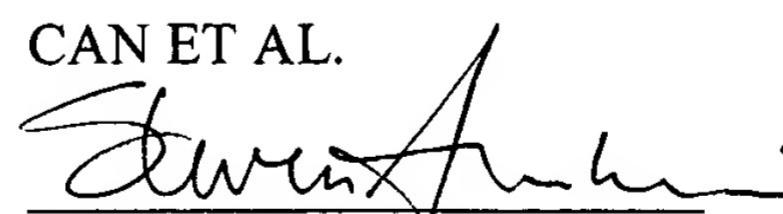
In view of the foregoing, all of the claims in this case are believed to be in condition for allowance. Should the Examiner have any questions or determine that any further action is desirable to place this application in even better condition for issue, the Examiner is encouraged to telephone Applicants' undersigned representative at the number listed below.

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Respectfully submitted,

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